

APPLICANT:
The Baker Cemetery Company
of Harford County

BEFORE THE
ZONING HEARING EXAMINER

REQUEST: Request for an extension of
a non-conforming cemetery pursuant to
Section 267-21 of the Harford County Code

FOR HARFORD COUNTY
BOARD OF APPEALS

HEARING DATE: November 14, 2007

Case No. 5619

ZONING HEARING EXAMINER'S DECISION

APPLICANT: The Baker Cemetery Company of Harford County

LOCATION: 3641 Churchville Road, Aberdeen, Maryland 21001
Tax Map: 51 / Grid: 2D / Parcel: 749
Second (2nd) Election District

ZONING: AG / Agricultural

REQUEST: Request for an extension of a non-conforming cemetery in the
AG/Agricultural District pursuant to Section 267-21 of the Harford
County Code.

TESTIMONY AND EVIDENCE OF RECORD:

The Applicant owns a 7.62 acre parcel on Churchville Road, just east of the intersection of MD Route 22 and I-95. Approximately 1-1/2 acres of the 7.62 acres is intended for expansion of the cemetery and is the subject of this application. The 1-1/2 acres which is proposed for expansion is located immediately to the west of the existing cemetery, and adjacent thereto. The new parcel has approximately 157 feet of frontage on MD Route 22 and extends a distance of 420 feet back from MD Route 22.

According to the application, the expansion parcel will have trees and undergrowth removed, and is to be graded to provide suitable contours for graves. The existing contours will need only slight modification. The expansion will provide available burial spaces for many years. Currently available cemetery spaces will be filled within approximately 3 to 5 years.

For the Applicant first testified Ona R. Lyman, President of the Board of Trustees of the The Baker Cemetery Company of Harford County. Mr. Lyman first described the history of The Baker Cemetery Company, stating that of the eleven present Board of Directors, five are descendants of the Baker family which originally founded the cemetery in the year 1888. The Company was founded as, and continues to be, a non-profit organization.

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The cemetery has been in continuous operation since that time, having purchased additional property in the years 1925 and 1946. Mr. Lyman explained that the present cemetery is virtually filled, and the Company has no available room for expansion. Accordingly, the Company has purchased the subject parcel, which is to be annexed to the cemetery operation.

Mr. Lyman also stated that the annexed property would help alleviate a serious traffic situation at the property. At present, a roadway into the property is located on MD 22 at approximately the center point of the existing cemetery. That entrance is at a very steep angle and causes vehicles to “bottom out”, particularly when they leave the property from that entrance. Hearses and vault trucks also bottom out when they enter or exit the cemetery at that point, as the road bed of MD Route 22 was apparently raised during its last reconstruction and widening. Also, parking on the annexed parcel will include a reconfigured roadway with the new entrance point at the far western point of the new parcel, and of a greater width to allow parking along the roadway. The current entrance point will then be closed. Mr. Lyman believes this will be a much safer and more convenient entranceway, will improve the circulation on-site, and will add additional internal parking. He is now concerned by people attending funerals who occasionally park on MD Route 22. This is a dangerous situation, according to the witness.

Mr. Lyman explained that in the years 1971 to 1972, 90% of the stock in the Company was transferred to Grace United Methodist Church in Aberdeen, Maryland.

Mr. Lyman understands that the Company must obtain a State Highway Administration Entrance Permit in order to relocate the driveway.

Mr. Lyman explained that 17 grave sites remain for sale. As there are approximately 10-15 interments per year, the cemetery is fast running out of available area. Mr. Lyman does not expect that rate to increase. However, after about three years the cemetery will have run out of available space. The cemetery generally restricts burial lots to residents of the Edgewood/Churchville/Havre de Grace area, and to those with relatives already buried at The Baker Cemetery. With the expansion onto the new 1-1/2 acres, and the reconfiguration of the driveway, the cemetery expects to add many years to its useful life. Mr. Lyman projects that the annexed property can be developed into approximately 900 new grave sites.

Mr. Lyman explained that the reconfigured drive alone the expanded cemetery will be approximately 18 feet wide which will allow visitors to double-park. This will avoid blockages in the cemetery and will be an improvement over the existing situation.

Mr. Lyman explained that no residences adjoin the subject property to the west and no residential use should be affected by the proposed expansion. The Company has sent letters to adjoining neighbors explaining the Company’s plans for expansion. No negative comments have been received in response to those letters. (See Applicant’s Exhibit No. 5.)

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Next for the Applicant testified Robert D. Capalongo, a landscape architect with CNA Engineers, Inc. Mr. Capalongo was offered and accepted as a expert in landscape architecture. Mr. Capalongo designed the site plan for the Company. (Attachment 2 to the Staff Report.)

The witness described the grade issue which exists at the current, western entrance to the cemetery. Cars and vehicles entering and leaving that location “bottom out” due to the most recent road construction and widening of MD Route 22. Furthermore, sight distance is not as good at the existing western entrance as it will be at the proposed new western entrance. The new entrance, which will be through the annexed property, will not present the same grade issues as the existing western entrance.

Mr. Capalongo also stated that visitors of the cemetery occasionally park on the shoulder of MD Route 22. This is quite dangerous. The construction of the new driveway and internal circulation pattern will allow 30-40 vehicles to parallel park along the driveway. As a result, much needed interior parking space for visitors will become available.

The proposed expansion of the drive area complies with all applicable subdivision and development requirements including the requirements of Code § 267-9I, Limitations, Guides and Standards.

Next for the Harford County Department of Planning and Zoning testified Anthony McClune. Mr. McClune testified that the requested expansion meets all applicable Subdivision and Development Code requirements. Mr. McClune envisions no adverse impact to any adjoining property owner or resident.

The Staff Report notes, inter alia:

“The topography is rolling rising up from Route 22 to the center of the property and then sloping down to the rear. There is a small area of wetlands to the rear of the property. The wooded area along the right or west side of the property is to be cleared to allow the expansion of the cemetery. There will remain a 25 foot buffer of trees between the entrance road and the property line. There are presently 2 entrances from Route 22 with an interior loop road system. A new entrance and access road is to be created along the right side of the property that will extend towards the rear of the property used as a cemetery tying into the existing road system. The entrance in the middle of the site has elevation issues and is difficult for most vehicles to negotiate without dragging. It will be eliminated and converted to a turn around area.”

Accordingly, the Department of Planning and Zoning recommends approval, with conditions.

No evidence or testimony was presented in opposition.

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APPLICABLE LAW:

Harford County Code Section 267-21 states:

“The Board may authorize the extension or enlargement of a nonconforming use, with or without conditions. Provided that:

- A. The proposed extension or enlargement does not change to a less-restricted and more intense use.*
- B. The enlargement or extension does not exceed fifty percent (50%) of the gross square footage in use at the time of the creation of the non-conformity.*
- C. The enlargement or extension does not violate the height or coverage regulations for the district.*
- D. The enlargement or extension would not adversely affect adjacent properties, traffic patterns or the surrounding neighborhood.*
- E. The limitations, guides and standards set forth in Section 267-9I, Limitations, guides and standards, are considered by the Board.”*

Furthermore, Section 267-9I of the Harford County Development Regulations, Limitations, Guides, and Standards, is applicable to this request and will be discussed in detail below.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The Baker Cemetery Company of Harford County is an institution of long standing within the County, serving Harford County residents for almost 120 years. The cemetery itself sits relatively unobtrusively to the south of MD Route 22 just to the west of the I-95 intersection. The property is improved by grave sites and a short interior loop road.

The capacity of the cemetery is virtually filled, and the Board of Trustees has acquired an additional 1-1/2 acres for expansion. The acquired parcel abuts the cemetery property to its west, is wooded, and adjoins non-residentially used land. In addition to allowing approximately 35 to 40 years of future burial space, the expanded area will allow the Board of Trustees to relocate the interior loop road so as to eliminate at present the difficult entrance to the west of the property to provide better sight distance along MD Route 22 and increase interior parking. This, in turn, will hopefully eliminate the need for occasional parking on MD Route 22.

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In truth, this proposal, which requires Board of Appeals approval because it is an expansion of an existing non-conforming use, exhibits many positive elements and benefits, with no perceptible negative ones.

In order to be approved, the application must first be found to comply with the requirements of Section 267-21 of the Harford County Code which allows a non-conforming use to be expanded provided that:

The Board may authorize the extension or enlargement of a nonconforming use, with or without conditions. Provided that:

A. The proposed extension or enlargement does not change to a less-restricted and more intense use.

The use will not be more intense. The use will, in fact, continue as it has for almost 120 years.

B. The enlargement or extension does not exceed fifty percent (50%) of the gross square footage in use at the time of the creation of the non-conformity.

The total site is approximately 7.62 acres with approximately 1.5 acres being proposed as the expanded cemetery. Accordingly, the 50% use limitation is not exceeded.

C. The enlargement or extension does not violate the height or coverage regulations for the district.

All applicable setbacks will be observed and no height or coverage regulations will be violated.

D. The enlargement or extension would not adversely affect adjacent properties, traffic patterns or the surrounding neighborhood.

The extension will not adversely affect properties or the surrounding neighborhood. Traffic conditions should be improved by the proposed expansion.

Furthermore, the specific considerations of Section 267-9I, Limitations, Guides and Standards, must be reviewed. The Applicant's proposed use clearly meets or exceeds all applicable considerations, discussed as follows:

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- (1) *The number of persons living or working in the immediate area.*

This expansion will not impact community employment or development, nor will the surrounding development or use of the surrounding properties adversely impact the proposed use.

- (2) *Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to roads; peak periods of traffic, and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.*

As discussed above, the proposed expansion will allow for better interior vehicular circulation, will provide increased interior parking, and will substitute an improved entrance for the current westerly entrance. In truth, 15 to 20 burials per year, plus occasional visitors, will have no perceptible impact on traffic flow on MD Route 22, which is a highly used, arterial road.

- (3) *The orderly growth of the neighborhood and community and the fiscal impact on the County.*

The cemetery has been in existence for 120 years without noticeable adverse impact on the community. A relatively minor expansion will cause no perceptible change to the impact of the cemetery on the neighborhood.

- (4) *The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise upon the use of surrounding properties.*

No such impact will be generated.

- (5) *Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the County or persons to supply such services.*

The Harford County Sheriff's Office and the Maryland State Police will provide police protection. The Aberdeen Volunteer Fire Company will provide fire protection.

- (6) *The degree to which the development is consistent with generally accepted engineering and planning principles and practices.*

The request is consistent with generally accepted planning principles and practices.

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- (7) *The structures in the vicinity, such as schools, houses or worship, theaters, hospitals, and similar places of public use.*

The proposed expansion will have no impact on any such uses. In fact, no such use has been identified.

- (8) *The purposes set forth in this Part 1, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.*

The proposed use is compatible with the Master Plan.

- (9) *The environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.*

No sensitive environmental features have been identified. No opportunities for recreation and open space will be adversely affected.

- (10) *The preservation of cultural and historic landmarks.*

The Baker Cemetery itself is an inventoried historic site. No other historical landmarks have been identified which may be impacted by the proposed use.

CONCLUSION:

Accordingly, it is recommended that the proposed expansion for the non-conforming use be approved, subject to the following conditions:

1. The Applicant shall obtain all necessary County, State and Federal permits for the expansion.
2. The Applicant shall obtain any necessary permits to utilize the western access onto MD Route 22. The access in the center of the property is to be removed.

Date: December 10, 2007

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on JANUARY 11, 2008.